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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In re S.B. et. al, Persons Coming
Under the Juvenile Court Law.

B301838

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No. DK18259

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Craig S. Barnes, Judge. Affirmed.

Erin Riley Khorram, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Acting
Assistant County Counsel, Tracy Dodds, Principal Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court exercised jurisdiction over S.B. and D.B., the two children of M.M. (mother) and T.B. (father)¹, under Welfare and Institutions Code² section 300, subdivisions (a), (b)(1), and (j). Following a hearing held under section 366.26, the court granted legal guardianship to the children's paternal grandmother and terminated jurisdiction.

Subsequently, mother filed petitions under section 388 seeking to modify the juvenile court's legal guardianship orders based on changed circumstances and new evidence. The court denied the petitions without holding a hearing. Mother appeals the summary denial of her section 388 petitions.

We dismiss this appeal as moot to the extent it pertains to S.B., who turned 18 while it was still pending. Finding no abuse of discretion, we affirm the juvenile court's order summarily denying the section 388 petition pertaining to D.B.

BACKGROUND

Mother and father have two children together: S.B., born in March 2002, and D.B., born in August 2010. In 2016, the juvenile court sustained a petition filed on behalf of both children by the Department of Children and Family Services (Department) under section 300, subdivisions (a), (b)(1), and (j). The court found the children were at substantial risk of serious physical harm due to:

1 Father is not a party to this appeal.

2 All further undesignated statutory references are to the Welfare and Institutions Code.

(1) father's physical abuse of S.B. (counts a-3 and j-2); (2) the parents' "history of engaging in physical and verbal altercations in the presence of the children" (count b-2); and (3) both parents' "mental and emotional problems" (counts b-3 and b-4).

The parents failed to reunify with their children, and the juvenile court held a permanency planning hearing under section 366.26 on July 11, 2018. There, the court found it would be detrimental for the children to be returned to their parents' physical custody, granted legal guardianship of the children to paternal grandmother, and terminated jurisdiction. Mother was granted at least two hours of monitored visitation per week.³

On September 10, 2019, mother filed two petitions under section 388 – one for each child – seeking to modify the order granting legal guardianship to paternal grandmother. Mother asserted that, due to changed circumstances and new evidence, the juvenile court should return the children to her care, or, alternatively, grant her reunification services and unmonitored visitation.

In support of her section 388 petition pertaining to S.B., mother attached a declaration stating: (1) she completed domestic violence and parenting classes in November and December 2016, respectively; (2) she has completed over 20 sessions of individual counseling and continues to attend therapy; and (3) paternal grandmother "kicked [S.B.] out" of her home.

3 The court's minute order states mother's visits were to be unmonitored. The reporter's transcript, however, indicates the court granted mother monitored visitation. "When there is a discrepancy between the reporter's transcript and the clerk's transcript, the reporter's transcript generally prevails as the official record of the proceedings. [Citation.]" (*In re J.P.* (2014) 229 Cal.App.4th 108, 118 fn. 4.)

Mother filed a separate declaration in support of her petition relating to D.B., in which she reiterated her completion of services. Mother also stated she “ha[s] been constantly visiting with [D.B.],” that D.B. “enjoys spending time with [her],” and that she and D.B. “have a very strong bond.” Additionally, in support of both petitions, mother attached certificates of completion for her domestic violence and parenting classes. She also provided a letter from her therapist stating she has consistently participated in counseling, “made notable progress in reaching her treatment goals,” and did not require further mental health services because she was “no longer endorsing [sic] any mental health symptoms or having any current impairments in functioning[.]”

On September 30, 2019, the juvenile court summarily denied mother’s section 388 petitions without holding a hearing. Mother timely appealed.

DISCUSSION

A. This appeal is moot to the extent it pertains to S.B.

On March 14, 2020, while this appeal was still pending, S.B. turned 18 years old. Under these circumstances, the Department argues no meaningful relief can be granted on the section 388 petition seeking S.B.’s return to mother’s custody. The Department thus contends this appeal is moot to the extent it relates to S.B. Mother agrees with the Department on this point.

It is well-settled that “a dependent child who has turned 18 cannot be returned to the physical custody of a parent.” (*In re*

K.L. (2012) 210 Cal.App.4th 632, 642.) We therefore dismiss this appeal as moot to the extent it pertains to S.B.

B. The juvenile court did not abuse its discretion in summarily denying mother’s section 388 petition pertaining to D.B. without a hearing.

Under section 388, subdivision (a)(1), a parent may petition for a hearing to change, modify, or set aside any order previously made by the juvenile court based on changed circumstances or new evidence. “To obtain an evidentiary hearing on a section 388 petition, a parent must make a prima facie showing that circumstances have changed since the prior court order, and that the proposed change will be in the best interests of the child. [Citations.] To make a prima facie showing under section 388, the allegations of the petition must be specific regarding the evidence to be presented and must not be conclusory. [Citation.] A section 388 petition must be liberally construed in favor of granting a hearing to consider the parent’s request. [Citation.]” (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.)

We review a juvenile court’s denial of a section 388 petition without a hearing for abuse of discretion. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1158.) “It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion[.]” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.)

Mother contends the juvenile court erred by denying her section 388 petition without a hearing because she made a prima facie case demonstrating changed circumstances, and that returning D.B. to her custody would be in his best interests. We disagree. As discussed below, we conclude the court could reasonably find mother did not make a prima facie showing that

D.B.'s return to her care was in his best interests. Accordingly, we need not address whether mother made a prima facie case of changed circumstances or new evidence.

Demonstrating a change in placement is in the child's best interests is a difficult burden to meet, particularly where, as here, reunification services have been terminated. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464 (*Angel B.*)) "After the termination of reunification services, a parent's interest in the care, custody and companionship [of the child] is no longer paramount. [Citation.] Rather, at this point, the focus shifts to the needs of the child for permanency and stability. [Citation.]" (*Ibid.*) "[T]here is a rebuttable presumption that, in the absence of continuing reunification services, stability in an existing placement is in the best interest of the child To rebut that presumption, a parent must make some factual showing that the best interests of the child would be served by modification." (*Id.* at p. 465.)

Mother argues her declaration and other documents in support of her section 388 petition showed returning D.B. to her care was in his best interests for three reasons.

First, mother contends that, by pointing out S.B. had been "kicked out" of paternal grandmother's home, she demonstrated D.B.'s placement with paternal grandmother may no longer be appropriate. As an initial matter, we note mother's declaration in support of the section 388 petition pertaining to D.B. does not mention S.B. getting "kicked out" of paternal grandmother's home. The record reflects mother only made that statement in her declaration supporting the section 388 petition relating to S.B. In any event, neither declaration contains any facts illustrating how S.B. getting "kicked out" of paternal

grandmother's home is relevant to the stability and appropriateness of D.B.'s placement with paternal grandmother. The declarations, for example, provide no information on when, how, or why S.B. was required to leave paternal grandmother's home.

Next, mother argues that by stating she and D.B. have developed a "strong bond" due to her visits with him, and that D.B. "enjoys spending time with [her]," she has shown it would be in D.B.'s best interests to be returned to her care. Mother aptly observes these statements, if credited, suggest her relationship with D.B. has improved since paternal grandmother was appointed his legal guardian. Nevertheless, mother's assertions are conclusory in nature and therefore do not constitute a factual showing sufficient to rebut the presumption that D.B.'s continued placement with paternal grandmother is in his best interests. Mother's declaration provides no facts elucidating the nature of her bond with D.B., specifying the frequency and extent to which she has visited with him, or illustrating the quality of her visits. Absent this (and other) information, the juvenile court could reasonably conclude mother failed to show D.B.'s placement in her care was in his best interests. This is especially the case given that the Department, in its permanency planning report, related mother frequently cancelled her visits, often requested to shorten her visits from two hours to one, and at times did not engage with D.B. or correct his misbehaviors during visits. The Department also reported that, more than once, D.B. requested his visits with mother end early because he was bored or tired.

Lastly, mother contends her completion of classes required by her case plan and consistent participation in mental health services demonstrate "she could provide for [D.B.] . . . the safe

and loving home [he] need[s].” We commend the progress mother has made, especially with respect to her mental health. Courts, however, have made clear that a parent’s “simple completion of [services] . . . does not, in and of itself, show prima facie that either the requested modification or a hearing would be in the minor’s best interests. [Citations.]” (*Angel B.*, *supra*, 97 Cal.App.4th at p. 463.) Here, mother’s service providers only confirmed her completion of services; none of them spoke to whether she could provide D.B. with suitable care or supervision, nor did they recommend his return to her custody. Under these circumstances, the juvenile court could appropriately find mother’s completion of services was insufficient to show D.B.’s placement in her care would be in his best interests. (See *Angel B.*, *supra*, 97 Cal.App.4th at pp. 463, 469 [affirming summary denial of section 388 petition notwithstanding mother’s completion of a drug program].)

Accordingly, on this record, we conclude the juvenile court did not abuse its discretion in summarily denying mother’s section 388 petition relating to D.B. without a hearing.

DISPOSITION

The appeal is dismissed as moot to the extent it pertains to S.B. The order summarily denying mother's section 388 petition pertaining to D.B. without a hearing is affirmed.

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CURREY, J.

We concur:

MANELLA, P.J.

COLLINS, J.